

To EPA Region 4

Re: Request for QNCR and SNC Records, State of Florida, NPDES Program

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests the following documents:

Copies of the actual documents submitted to the EPA by the Florida, Department of Environmental Protection as delineated below. The records themselves include information beyond the information that is found on the EPA website. Inasmuch as the online information is only partially responsive to our previous request we are requesting:

1. *All Quarterly Noncompliance Reports (QNCRs) submitted to your agency by the Florida, Department of Environmental Protection (FDEP) from the 1st quarter of 2018 through the 4th Quarter of 2019 for the National Pollutant Discharge Elimination Program (NPDES Program);*
2. *All Significant Noncompliance Reports (SNCs) submitted to your agency by the Florida, Department of Environmental Protection from 1st quarter of 2018 through the 4th Quarter of 2019 for the National Pollutant Discharge Elimination Program.*

[This request includes all documents that have ever been within your custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files currently or at any other time.]

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an

index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA, its delegated programs and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

PEER is seeking this information in order to evaluate and investigate the performance of the FDEP in administering the federal NPDES program. This is particularly important at present because of the clear efforts of state officials in Florida to curtail enforcement of the wastewater program in Florida. Release of the requested information is in the interest of the general public, in order for the public to understand both the environmental compliance of NPDES facilities in the region, as well as to understand how the State of Florida is addressing the issues raised and the nature of EPA’s oversight of the federally delegated NPDES program.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Disclosure of the above requested information is in the public interest because disclosure would contribute significantly to the public understanding of both the FDEP’s administration of the NPDES program and the way the EPA exercises its oversight responsibilities of said program. This program is gaining increasing exposure due to the myriad efforts to restore Florida’s surface waters, including the Everglades, through the enforcement of NPDES Permits. In addition, the FDEP continues to claim that agency-wide 96% of its permittees are in significant compliance with their permits, a claim that its own data doesn’t support.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on PEER’s web page which draws between 1,000 and 10,000 viewers per day; and

- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

As the Agency well knows from past direct experience, PEER has a long track record of attracting media and public attention to the internal records of federal agencies. For example, PEER previously released information regarding the FDEP's failure to require the City of Boca Raton to abide by its NPDES Permit issued pursuant to the CWA. Our ability to fully evaluate Boca Raton's facility occurred, in part, due to previous QNCR and SNC documents provided to PEER by the EPA under FOIA. In our subsequently released information PEER asked the EPA to use its authority to assume control over Boca Raton's permit, something that Region 4 neglected to do, even though the Boca Raton facility is a facility with numerous permit problems. Despite Region 4's position, the Florida, Department of Health finally initiated formal enforcement against the facility. We believe that the FDOH's action occurred, in part, because of increased public pressure brought about because of our publication of this issue.

PEER has also released information to the public concerning the failure of the wastewater treatment facility in Daytona Beach, Florida to comply with its permit requirements. The SNC/QNCR information received from EPA pertaining to the facility's compliance history directly aided in this public disclosure.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

While it is difficult to warrant in advance to seeing it just how significant the information will be to the general public, the nature of the information should shed some direct light on the manner in which the administration of the NPDES Program in Florida is carried out, because it sheds direct light on the reporting that the FDEP engages in to educate the EPA on the compliance status of NPDES facilities. This, in turn, enables the public to gain an understanding into which facilities in the state are chronically violating their permits. The public, armed with this information, can then bring attention to the identified problems and seek to require agency officials, and elected officials, to enforce the requirements of the CWA. This is particularly important at present because of the clear efforts of state officials in Florida, notwithstanding their claims to the contrary, to curtail enforcement of the wastewater program in Florida. If the EPA is not willing to force the states to properly administer the CWA when the states such as Florida are given federal grant money for the same, the public should know this.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (850) 877-8097. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

Jerry Phillips

Director

Florida PEER

P.O. Box 14463

Tallahassee, FL 32317-4463

Telephone: (850) 877-8097

Facsimile: (850) 942-5264

" PEER is a national non-profit alliance of local, state and federal scientists, law enforcement officers, land managers and other professionals dedicated to upholding environmental laws and values." **Please Visit Our Website At www.peer.org!**